

Appeal from decision of Nevada State Office, Bureau of Land Management, cancelling public airport lease N-4405.

Affirmed.

1. Act of May 24, 1928 -- Airports -- Public Lands: Leases and Permits

BLM may properly cancel a public airport lease issued pursuant to the Act of May 24, 1928, as amended, 49 U.S.C. §§ 211-214 (1982), where the lessee fails to complete construction of airport facilities within 6 months of the date of the lease, as required by the terms of the lease.

APPEARANCES: Alfred Gerstler, pro se.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Alfred Gerstler has appealed from a decision of the Nevada State Office, Bureau of Land Management (BLM), dated June 14, 1984, cancelling public airport lease N-4405.

On February 9, 1970, appellant filed a lease application for a public airport to be situated in the Pahrump Valley, Nye County, Nevada. After two amendments to the application and a relinquishment of a portion of the land sought, the application described 920 acres of land which appellant sought for construction of an airport to be known as the Pahrump Valley Regional Airport.

By letter dated March 14, 1977, the Federal Aviation Administration (FAA) issued notice of its determination that, when constructed on the designated site, an airport could be operated safely and efficiently. However, FAA stated that this determination "becomes void" if the proposed facility is "not activated within two years from the date of this notice."

The record also contains documents reflecting the concern of the Board of Nye County Commissioners that an airport be constructed in Pahrump Valley to replace an existing airport which was to be removed. In a letter to appellant dated December 15, 1976, the Nye County District Attorney stated that

the Commissioners desired "to insure that a proper facility will ultimately be established without any lengthy delay in the services of an airport being made available in the Pahrump Valley area."

In a letter dated April 19, 1977, appellant informed BLM that "[w]e plan to develop the airstrip and necessary appurtenances as soon as possible after we are given the official approval by the various officials concerned in the airport development."

On January 7, 1980, BLM issued a 20-year public airport lease to appellant pursuant to the Act of May 24, 1928, as amended, 49 U.S.C. §§ 212-214 (1982), and 43 CFR Subpart 2911. Section 2 of the lease provides in pertinent part that: "For and in consideration of the foregoing, lessee hereby agrees: * * * (c) To complete the construction facilities for service, fuel, and other supplies necessary to make the land available for public use as an airport within six (6) months from date of this lease." In addition, section 3(c) of the lease provides that: "If the lessee shall fail to: * * * (3) comply with provisions of this lease * * * lessor may, in its discretion, terminate and cancel this lease."

A field examination of the site of the proposed airport on November 9, 1983, revealed "no evidence of development," in violation of section 2(c) of the lease. By letter dated December 14, 1983, BLM requested appellant to comment on the findings. On January 12, 1984, appellant responded that he was in contact with the two U.S. Senators for Nevada "regarding funding assistance for this project." By memorandum dated April 27, 1984, the Area Manager, Stateline Resource Area, recommended that BLM cancel appellant's lease because of failure to establish a public airport or to commence any development "within the six (6) month period required by Sec. 2(c) of the subject lease." The Area Manager noted that a further field examination, made on April 18, 1984, had revealed no evidence of any development activity. In its June 1984 decision, BLM cancelled appellant's lease for lack of compliance with section 2(c) of the lease.

In his statement of reasons for appeal, appellant explains that it has been "financially unfeasible to commence construction during this period from 1980 to present," but that he should be able to commence construction "within the year," due to an upturn in the national economy and the expanded population in the Pahrump Valley area. Appellant notes that his rental payments (\$15 per annum) are up-to-date.

[1] Section 2 of the Act of May 24, 1928, as amended, 49 U.S.C. § 212 (1982), provides that the lessee under a public airport lease shall provide such facilities "as are necessary to make the lands available for public use as an airport." The applicable regulation, 43 CFR 2911.2(a), further provides that the lessee "shall within 6 months of the date of the lease, equip the airport as required by the Administrator, Federal Aviation Administration." In addition, 43 CFR 2911.1-2(c) provides that the authorized officer

may, in his discretion, cancel a lease issued under the act of May 24, 1928, for any of the following reasons: If the lessee fails to use the leased premises or any part thereof * * * or

shall fail to comply with the regulations in this part or the terms of the lease.

The clear import of section 2(c) of appellant's lease is that the lessee must complete construction of the airport "facilities" within 6 months from the date of the lease. The record establishes that appellant has not only failed to complete construction, but has failed to even commence construction within the designated period. In such circumstances, both 43 CFR 2911.1-2(c) and section 3(c) of the lease give BLM discretionary authority to cancel the lease. Exercise of that authority must not be arbitrary or capricious or constitute an abuse of discretion. However, where 4 years have elapsed with no indication by appellant that he is in a position to even commence, let alone have completed construction of the airport, we conclude that BLM properly exercised its discretion when cancelling appellant's lease. Jose Rodriguez, 49 IBLA 258 (1980). Appellant has sought Federal funding for construction, but has offered nothing to indicate that this funding would be available to him. Moreover, the record indicates a need for another airport in Pahrump Valley and that the airport cannot be constructed by another party until appellant's lease is cancelled and another issued. Appellant may, of course, file a new application for a lease at such time that he can prove to BLM that he is actually in a position to develop the airport within the prescribed time.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

R. W. Mullen
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Edward W. Stuebing
Administrative Judge

